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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,842	11/21/2001	Paul A. Moskowicz	CHA920010021US1	2704
45095 7590 10/01/2009 HOFFMAN WARNICK LLC 75 STATE ST 14 FL ALBANY, NY 12207				
EXAMINER NELSON, FREDA ANN				
ART UNIT		PAPER NUMBER		
3628				
NOTIFICATION DATE		DELIVERY MODE		
10/01/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: PAUL A. MOSKOWITZ, CHARLES P. TRESSER,
and ROBERT J. VON GUTFELD

Application No. 09/990,842
Technology Center 3600

Mailed: September 30, 2009

Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 21, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure*

(MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed April 30, 2009, is deficient because the "Evidence Relied Upon" section fails to include the reference Ando (5,955,970) cited on pages 6, 8, and 13-14 in the Examiner's Answer's grounds of rejection of claims 3-6, 15, 17, 19-20, 22, and 25 under 35 USC § 103(a). Additionally, the reference to Force (5,533,123) is incorrectly listed with the Ando reference's patent number.

Appropriate correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 2) for such further action as may be appropriate.

Application No. 09/990,842

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/bar

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